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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

No. 563.

Office Supreme Court U. S.
FILED
FEB 15 1904
JAMES H. McKENNEY,
Clerk

HENRY C. PETTIT, United States Marshal for the District of Indiana,
Appellant,

vs.

THOMAS WALSHE.

SIRS:

Please take notice a motion will be made, for the reasons and upon the grounds, hereto annexed, before the United States Supreme Court, at a session thereof to be held at the Capitol, in the City of Washington, D. C., on Tuesday, the 23rd day of February, 1904, at twelve o'clock, noon, or as soon thereafter as counsel can be heard, for a rule or order advancing this cause and setting it down for hearing and argument on a day to be fixed by the Court.

Dated, New York, February 8th, 1904.

Yours, etc.,

CHARLES FOX,
Attorney for Appellant, H. B. M.,
Consul General, at New York,
Office and Post-Office Address,
No. 3 Broad Street,
Borough of Manhattan,
New York City.

To

ADDISON C. HARRIS and FREDERICK WINTER, Esqs.,
Attorneys of Record, for Appellee.
HENRY C. PETTIT, Esq.,
Marshal of the United States for the District of Indiana, Appellant.

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HENRY C. PETTIT, United States Marshal for the District of Indiana,

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And now comes Sir Percy Sanderson, K. C. M. G., &c., &c., His Britannic Majesty's Consul General, at the Port of New York, appellant, of record, by Charles Fox, his counsel, and moves this Honorable Court to advance the above-entitled cause upon the calendar, and to set the same down for argument for a day certain.

The matter involved herein is an appeal from a final order of the Circuit Court of the United States, in and for the District of Indiana, granting a writ of *habeas corpus* to, and discharging the appellee, from custody, on the ground that the appellee was illegally apprehended, and held in custody by the Marshal of the United States for the District of Indiana, under a warrant issued upon a complaint of your applicant, under oath, by a commissioner in the Southern District of New York, duly authorized to act, under the provisions of Sec. 5270 of the Revised Statutes, and made returnable before the said Commissioner, in the Southern District of New York, in pro-

ceedings instituted for the extradition of the appellee, under the provisions of the extradition treaties between the United States and Great Britain, and holding that the appellee, under the said treaties and the laws of the United States, could only be apprehended and held in custody, in proceedings for his extradition, under and by a warrant made returnable in the District of Indiana.

That prior to the order appealed from, it was held that a warrant issued, in extradition proceedings, under the laws of the United States, could be executed anywhere, within the United States, and the person apprehended thereunder brought before the magistrate, in a State of the United States, other than the State in which he was apprehended, pursuant to the directions contained in the warrant. It was so held in the Henrich case, 5 Blatch., 414, decided in 1867, and this case has been referred to, and cited in subsequent cases, as an authority for such practice.

That warrants in extradition proceedings instituted by appellant, as the representative of his Government, have been executed in States of the United States, other than the State of New York, in which the warrant was issued and made returnable before a Commissioner, in the Southern District of New York, and a number of warrants in extradition proceedings, on behalf of other foreign Governments, have been likewise executed in States other than the one in which they were issued, and that this practice has existed for a number of years.

That within the jurisdiction of the Circuit Courts of the United States for the First and Second Circuits, it would appear, from the decisions of the Courts of the United States therein, that a warrant issued in extradition proceedings could be executed anywhere within the United States, which decisions are in conflict with the order ap-

pealed from herein, thus producing confusion and uncertainty as to the course to be adopted by representatives of foreign Governments in extradition proceedings, in obtaining warrants, where the person desired to be apprehended is without the residential district of the representative of the foreign Government, directed to institute the proceedings on behalf of his Government.

That the appellant has had, since the order appealed from herein, two cases, in which the persons were not within the State of New York, but in adjoining States, but their exact whereabouts could not be ascertained, and there is likely to arise at any time a proceeding for extradition, in which the appellant may be directed, as the representative of his Government, to institute proceedings for the extradition of a person to be found in a State of the United States other than the State of New York, where appellant has his office, and it is desirable that a speedy decision of this Honorable Court herein be obtained, that it may be conclusively determined and settled by this Honorable Court whether warrants in extradition proceedings are limited in their execution to the ~~territory~~ district wherein they are issued or made returnable.

Respectfully submitted,

CHARLES FOX,
Attorney for Appellant,
H. B. M., Consul General at
New York,
3 Broad Street,
New York.